IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

OP.No. 8400 of 2002(Y)

PETITIONER:

FR.THOMAS KARAMAKUZHY,
VICAR, ST. STEPHEN'S CHURCH,
KURUMULLOOR, KOTTAYAM.

BY ADV. SRI.MATHEW PHILIP EDAPPALLIL,
SRI.M.J.THOMAS.

RESPONDENTS:
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1. **THE DISTRICT SUPERINTENDENT OF POLICE,**
   KOTTAYAM.

2. **THE CIRCLE INSPECTOR OF POLICE,**
   ETTUMANNOOR, KOTTAYAM.

3. **M.C.ABRAHAM, MUGHACHIRAYIL HOUSE,**
   ATHIRAMPUZHA, KOTTAYAM.

BY GOVERNMENT PLEADER SMT. N. SUDHA DEVI,
ADV.SRI.P.M.NATESAN,
ADV.SRI.P.K.MURALEEDHARAN.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/08/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P. NO. 8400/2002-Y:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER DTD. 16/04/99 IN C.M.P. 1553/99 IN O.P. 4618/99 HIGH COURT OF KERALA.

EXT.P.2: COPY OF THE NOTICE DTD. 18/04/99 ISSUED BY THE R.2. TO THE PETITIONER.

EXT.P.3: COPY OF THE JUDGMENT IN O.P. 4618/99 DTD. 07/12/2000, HIGH COURT OF KERALA.

RESPONDENT'S EXHIBITS:

EXT.R3.A: COPY OF THE COUNTER AFFIDAVIT DT. 23/01/2002.

EXT.R3.B: COPY OF THE AFFIDAVIT AND PETITION DTD. 23/07/2002.

//TRUE COPY//

prv.

T.R. Ramachandran Nair, J.

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O.P.NO.8400 of 2002-Y

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Dated this the 14th day of August, 2007

JUDGMENT

The petitioner is the Vicar of St. Stephen's Church, Kurumullur near Kottayam. The substantial relief sought for in this original petition is for the issuance of a direction to respondents 1 and 2 to remove the lock and seal of cellar No.36 of the concrete vault of the church in question so as to enable the use of the same for burying other dead bodies.

2. The history of the case reveals that in an earlier writ petition filed by the third respondent herein, viz. O.P.No.4618/1999 this court had passed an order Ext.P1 in C.M.P.No.1553/1999 directing the Circle Inspector of Police, Ettumanoor to lock and seal safely cellar No.36 in the cemetery of St. Stephen's Church. The said original petition was filed mainly for a direction to the Central Bureau of Investigation to investigate the cause of death of the son of the third respondent. Ultimately, the original petition was dismissed by Ext.P3 judgment by a Division Bench of this court. A reading of the judgment shows that this court was of the opinion that since the incident alleged to have happened in Karnataka, the petitioner therein had to approach the courts therein for redressal of his grievances. In

paragraph 6 of the judgment, a reference is made to the further complaint dated 25.4.1999 submitted by the petitioner in that original petition complaining that some posters were seen even on the wall of the cemetery containing defamatory statements against the petitioner even touching on the death of the petitioner's son. Ultimately, the original petition was disposed of observing that if the petitioner has such a complaint, it is not for this court to direct the Karnataka Police to investigate such issues. It is for the petitioner to approach the concerned authorities. The petitioner therein was also directed to approach the District Superintendent of Police, Kottayam with a proper representation highlighting his complaints also touching on the incidents mentioned therein, within a period of one month from the date of judgment.

3. The alleged complaints raised subsequently related to the pasting of posters in the wall as well as damage caused to three coconut trees. The petitioner in the present writ petition approached this court in view of the fact that even after disposal of the earlier original petition, the police has not allowed the church to open cellar No.36, as the same has to be used for burying the parishioners.

4. The third respondent has filed a counter affidavit. It is revealed from the averments in the counter affidavit that after the disposal of the

original petition filed by him, he had approached this court by filing C.C.C. No. 1267/200, wherein Exts.R3(a) and R3(b) affidavits have been filed by the Superintendent of Police, Kottayam. Ext.R3(a) will show that the Bangalore Police even though registered Crime No.24/1997, a final report was submitted before the Sub Divisional Magistrate Court, Mangalore treating the case as 'suicide'. In the affidavit it is also stated that the further allegations by the third respondent regarding the conspiracy of the death of his son, was also not found to be correct by the police. It is revealed from the affidavit that Crime No. 46/2001 under Sections 427 and 447 was registered at Kuravilangad Police Station which was investigated by the Sub Inspector of Police and the allegation in the crime related to destruction of three coconut trees only. Crime No.45/2001 was registered alleging offence under Section 297 I.P.C. Which was also investigated by The Sub Inspector of Police. The allegation in the said crime was regarding sticking of posters on the walls of the cemetery of the church on 24.4.1999. In Ext.R3(b) affidavit it was further explained that investigation in regard to the matters are going on and the same will be finalised within four months.

5. Going by the above state of affairs, it is a case where nothing could be brought out on the allegation that the third respondent's son was murdered and there was no acceptable evidence to proceed further in that

matter. The other complaints which were directed to be investigated by this court by Ext.P3 judgment, related to the allegation of sticking of defamatory posters as well as destruction of three coconut trees. As already noticed, those did not reveal detection of any serious crime.

6. In the light of the above facts emerging from the pleadings, I am of opinion that cellar N0.36 of the cemetery which was kept under lock and seal by the police pursuant to the interim order passed by this court by way of Ext.P1, need not be kept under the same position at this distance of time. Ext.P1 order was passed in C.M.P.No.1553/1999 in O.P.no.4618/1999. When the final judgment was rendered, the C.M.P. has been dismissed as evident from Ext.P3 judgment itself. Therefore, the said order is not in force and it is not the case of the parties that the vault has to be kept under lock for the purpose of further investigation in respect of any crime. The reasons pointed out by the petitioner that the vault cannot be kept under lock indefinitely, are genuine and it is required for the use of burying other dead bodies.

7. Therefore, the original petition is allowed and respondents 1 and 2 are directed to remove the lock and seal of cellar No.36 of th concrete vault of St. Stephen's Church, Kurumullur, so as to enable the petitioner to use the same for burying other dead bodies. Appropriate action will be taken

immediately on production of a copy of this judgment.

(T.R. Ramachandran Nair, Judge.)

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T.R. Ramachandran Nair, J.

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O.P. No.8400 of 2000-Y
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JUDGMENT

14th August, 2007.